

TUESDAY, MARCH 12, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of this matter: *Craft Communications, Inc.*, 56077, 128623.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Guillermo Cuervo Ramirez, 84547

10-1-95 to 4-13-97, \$102,104.66 Tax

\$10,129.99 Penalty, Negligence

Gui Auto Sales, Inc., 84548

10-1-95 to 4-13-97, \$176,126.34 Tax

\$17,612.63 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Jean Marie O'Leary, 40658, 40659

7-1-97 to 6-30-98, \$00.00 Tax

\$00.00 Penalty, Negligence

1-1-95 to 6-30-97, \$00.00 Tax

Printec Industries, Inc., 40669

7-1-97 to 6-30-98, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Section.

Craft Communications, Inc., 56077, 128623

10-1-96 to 3-31-97, \$00.00 Tax

\$00.00 Penalty, Finality

4-1-97 to 9-30-99, \$13,778.09 Tax

\$963.68 Penalty, Finality

Action: The Board took no action.

S. M. Inc., 89000233770

1-1-95 to 12-31-97, \$00.00 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

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Edmund Ng and James Yu, 91435

7-1-99 to 12-31-99, \$00.00 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

Issa Safi Hindi, 89002154900

4-1-93 to 3-31-96, \$27,734.66 Tax

Action: Redetermine as recommended by the Appeals Section.

Suzy Ngo, 53376

4-1-96 to 3-31-99, \$7,401.39 Tax

Action: Redetermine as recommended by the Appeals Section.

8301 Marsal, Inc., 61859

7-1-96 to 6-30-99, \$3,167.46 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Willy Rodriguez, 89002263640

3-14-94 to 6-30-97, \$27,846.94 Tax

\$6,961.81 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Iskandar Pogosian, 33749

1-1-96 to 12-31-98, \$31,919.59 Tax

\$3,206.79 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Shawn David Peden, 91834

1-1-97 to 8-3-99, \$2,690.29 Tax

Action: Redetermine as recommended by the Appeals Section.

Herbert Amilcar Aparicio, 53460

1-1-87 to 12-31-89, \$31,073.86 Tax

\$3,107.36 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

Rain Dancer Corporation, 82996

7-1-96 to 12-31-99, \$18,207.11 Tax

\$1,740.68 Penalty, Negligence

\$161.37 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

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Eduardo Livraga, 83005

7-31-96 to 12-31-99, \$263,947.08 Tax

\$62,346.40 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Hampartsoum Kouroumlian, 89000966370, 89000966350

5-1-92 to 6-30-95, \$846,230.70 Tax

\$211,557.71 Penalty, Fraud

6-1-92 to 6-30-95, \$2,798,198.80 Tax

\$699,549.74 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Jerald R. Cowan, 15367

12-1-96 to 4-30-97, \$00.00 Tax

\$6,077.25 Penalty, Fraud

Action: Redetermine as recommended by the Appeals Section.

Abbas A. Eslami & Mahmood Yadegeri, 89876

1-1-97 to 12-31-99, \$3,049.17 Tax

Action: Redetermine as recommended by the Appeals Section.

Technicolor, Inc., 48272

6-26-94 to 6-28-97, \$115,629.04 Tax

Action: Redetermine as recommended by the Appeals Section.

Sharon K. Schaefer and Raymond W. Geiser, Jr., 33177

7-1-96 to 3-31-99, \$5,317.46 Tax

\$00.00 Penalty, Negligence

Action: Redetermine as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Abolghasem A. Moghadam, 107050

1996, \$13,436.19 Tax

Action: Sustain the action of the Franchise Tax Board.

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Joanne G. Lustman, 113604

1995, \$1,545.00 Tax

\$309.00 Penalty, Accuracy

1996, \$1,292.00 Tax

\$258.40 Penalty, Accuracy

Action: Sustain the action of the Franchise Tax Board.

Robert V. and Lynne G. Arias, 114000

1997, \$1,129.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Ramon Colon, 115267

1998, \$1,364.00 Tax

\$341.00 Penalty, Late Filing

\$341.00 Penalty, Notice and Demand

Action: Sustain the action of the Franchise Tax Board.

Michael Sheridan, 115327

1994 and 1995, \$985 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kenneth R. Wash, 115329

1998, \$973.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Paul and Linda Yahnke, 127687

1997, \$1,807.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

LaSalle G. C. Trust #11, 128283

1998, \$866.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael J. Cleveland, 129445

1994, \$905.16 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Design & Test Technology, Inc., 129725

12-31-95, \$2,483.25 Claim for Refund

12-31-96, \$693.00 Claim for Refund

12-31-97, \$1,075.25 Claim for Refund

12-31-98, \$543.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Richard M. Scott, 129898

1996, \$2,280.00 Tax

\$570.00 Penalty, Late Filing

1997, \$9,803.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Thomas E. Wintraub, 129910

1990, \$38,967.28 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Steve U. Jansson, 130155

1991, \$1,809.28 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Frank E. Pratt, Jr., 131796

1997, \$487.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joseph C. and Ceferina B. Montesclaros, 131865

1994, \$1,507.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Billy T. and Jan F. Edens, 131996

1995, \$4,476.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Michael J. and Lea Christensen-Morris, 132272

1996, \$279.86 Claim for Refund

\$793.00 Penalty, Notice and Demand

\$100.00 Penalty, Late Filing

1997, \$221.46 Claim for Refund

\$154.69 Penalty, Late Payment

Action: Sustain the action of the Franchise Tax Board.

Michael Chandler, 133912

1997, \$400.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Tom F. and Toni M. Thompson, 133980

1997, \$367.01 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Jose M. and Sunta Velazquez, 134083

1995, \$439.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Leonard A. Hill, 134163

1983, \$1,680.00 Assessment

1984, \$3,169.00 Assessment

1985, \$1,212.00 Assessment

1986, \$730.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Doris Parker Testamentary Trust, 134706

1982, \$2,047.60 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jill L. Kadile, 135312

1999, \$464.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Asim and Razia Salim, 136376

1997, \$1,155.25 Assessment

Action: Sustain the action of the Franchise Tax Board.

Michael and Sandra DeWitt, 138492

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Shivajirao M. and Mita S. Deshpande, 139939

1997, \$613.35 Claim for Refund

Action: Sustain the modified action of the Franchise Tax Board.

William and Laura C. Simmons, 82055

1994, \$22,099.00 Assessment

Action: Deny the petition for rehearing.

Les Roy Reid, 93312

1998, \$6,620.00 Tax

\$1,655 Penalty, Late Filing

Action: Deny the petition for rehearing.

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Kathryn L. Daniels, 94599

1998, \$902.00 Tax

\$225.50 Penalty, Late Filing

\$271.75 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Michael Myers, 101135

1998, \$608.00 Tax

\$152.00 Penalty, Late Filing

\$152.00 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Lori M. Langdon, 101136

1998, \$895.00 Tax

\$223.75 Penalty, Late Filing

Action: Deny the petition for rehearing.

Ralph and Patricia Stephany, 111257

1997, \$2,551.00 Assessment

Action: Deny the petition for rehearing.

Robert A. Wiemer, 111404

1989, \$7,495.00 Tax

\$374.75 Penalty, Negligence

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Myung Sup Lee, 105661

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Roberta Trimble, 114351

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Wilfred Barton, 130159

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Cathy Leisure, 133423

2000, \$1.00 or more Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Mariano Rosas Navarro, 134556

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES, DENIALS OF CLAIMS FOR REFUND AND DENIALS OF RELIEF OF PENALTY, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties, Denials of Claims for Refund and Denials of Relief of Penalty, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Maurice Marciano, 97602

1-1-97 to 12-31-97, \$268,549.14

Action: Approve the redetermination as recommended by staff.

Paul Marciano, 94634

1-1-97 to 12-31-98, \$

Action: Approve the redetermination as recommended by staff.

Georges David Marciano, 93964

7-1-97 to 12-31-97, \$591,722.60

Action: Approve the redetermination as recommended by staff.

Saddleback Memorial Medical Center, 130267

7-1-97 to 6-30-00, \$105,322.53

Action: Approve the redetermination as recommended by staff.

P Q Corporation, 52781

4-1-95 to 3-31-98, \$423,071.39

Action: Approve the redetermination as recommended by staff.

Computer Associates Intl. Inc., 111297

1-1-96 to 12-31-98, \$1,039,604.02

Action: Approve the redetermination as recommended by staff.

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Sherwood Medical Company, 89000831800

4-1-94 to 3-30-97, \$242,300.82

Action: Approve the redetermination as recommended by staff.

FTP Software Inc., 19634

10-1-94 to 6-30-97, \$201,599.80

Action: Approve the redetermination as recommended by staff.

Faso Holdings Inc., 143460

3-17-98, \$149,187.50

Action: Approve the redetermination as recommended by staff.

Atlantis Charters LLC, 118980

9-16-97, \$94,365.25

Action: Approve the redetermination as recommended by staff.

William J. Link, 136383

2-11-00, \$110,134.00

Action: Approve the redetermination as recommended by staff.

Trans Exec Air Service, 144906

7-28-00, \$2,120,250.00

Action: Approve the redetermination as recommended by staff.

McKinney Management LLC, 141490

1-25-00, \$2,965,746.30

Action: Approve the redetermination as recommended by staff.

John and Betty Scarborough Trust, 142317

5-17-00, \$52,383.38

Action: Approve the redetermination as recommended by staff.

The R.A.Q. Corporation, 89002046530

1-1-89 to 3-31-97, \$108,873.11

Action: Approve the redetermination as recommended by staff.

Brooktrout Technology Inc., 128568

7-1-95 to 9-30-99, \$87,182.01

Action: Approve the redetermination as recommended by staff.

Maurice Marciano, 112513

4-1-98 to 6-30-98, \$171,704.50

Action: Approve the redetermination as recommended by staff.

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Sonn Lay Houn, 63298

1-1-97 to 12-31-99, \$68,101.20

Action: Approve the redetermination as recommended by staff.

General Electric Capital Corp., 101793

1-1-94 to 12-31-96, \$560,602.32

Action: Approve the redetermination as recommended by staff.

Digital Theater Systems, LP, 61858

10-1-94 to 9-30-97, \$150,594.05

Action: Approve the redetermination as recommended by staff.

Jin Jin International Trade, Inc., 75933

1-1-96 to 3-31-99, \$33,823.15

Action: Approve the redetermination as recommended by staff.

Colloid Environmental Technology Company, 93439

7-1-96 to 9-30-99, \$161,897.32

Action: Approve the redetermination as recommended by staff.

Washington H & D, Inc., 119168

1-1-97 to 12-31-99, \$133,863.95

Action: Approve the redetermination as recommended by staff.

Todey Motor Co., Inc., 155454

1-1-01 to 3-31-01, \$50,342.49

Action: Approve the relief of penalty as recommended by staff.

Toyota of Garden Grove, 154826

7-1-01 to 9-30-01, \$52,788.50

Action: Approve the relief of penalty as recommended by staff.

Broadway Typewriter Inc., 149983

4-1-01 to 6-30-01, \$744,776.00

Action: Approve the relief of penalty as recommended by staff.

Loehmann's Inc., 154823

12-31-00 to 4-07-01, \$90,567.50

Action: Approve the relief of penalty as recommended by staff.

SAP America Inc., 150554

10-1-99 to 10-31-99, \$65,332.42

Action: Approve the relief of penalty as recommended by staff.

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SAP America Inc., 150555

11-1-99 to 11-30-99, \$65,332.42

Action: Approve the relief of penalty as recommended by staff.

Illuminations.Com, Inc., 155531

10-1-00 to 12-31-00, \$69,146.40

Action: Approve the relief of penalty as recommended by staff.

California Offset Printers Inc., 118735

10-1-97 to 3-31-00, \$85,297.09

Action: Approve the denial of claim for refund as recommended by staff.

Gallade Chemical inc., 80565

4-1-97 to 9-30-99, \$81,235.34

Action: Approve the denial of claim for refund as recommended by staff.

Advanta Leasing Corp., 118731

7-1-00 to 9-30-00, \$356,292.79

Action: Approve the denial of claim for refund as recommended by staff.

Debis Financial Services Inc., 89000892200

10-1-95 to 6-30-98, \$109,870.64

Action: Approve the denial of claim for refund as recommended by staff.

MHI Injection Mldng Machinery Inc., 154476

1-1-99 to 12-31-00, \$132,809.53

Action: Approve the denial of claim for refund as recommended by staff.

Envision Group Inc., 79364

4-1-98 to 12-31-99, \$53,684.05

Action: Approve the denial of claim for refund as recommended by staff.

Heating & Cooling Supply Inc., 140221

10-1-96 to 9-30-99, \$131,537.00

Action: Approve the denial of claim for refund as recommended by staff.

Avado Brands Inc., 145809

1-1-01 to 3-31-01, \$81,140.50

Action: Approve the denial of relief of penalty as recommended by staff.

Avado Brands Inc., 145811

10-1-00 to 12-31-00, \$65,063.70

Action: Approve the denial of relief of penalty as recommended by staff.

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Siebel Systems Inc., 145594

7-1-00 to 9-30-00, \$109,792.50

Action: Approve the denial of relief of penalty as recommended by staff.

CMI Sales Company, 151812

4-1-01 to 6-30-01, \$66,472.90

Action: Approve the denial of relief of penalty as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board made the following orders:

Tony Borhani, 151794

10-1-98 to 6-30-01, \$162,937.41

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, and Mr. Parrish voting yes, Mr. Andal absent, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Heineken USA, Incorporated, 156115

7-1-00 to 12-31-00, \$137,305.36

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Heineken USA, Incorporated, 156116

7-1-01 to 9-30-01, \$87,736.35

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Miller Brewing Company, 156117

2-1-01 to 2-28-01, \$169,547.34

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**Robert and Robin Bender, 75792**

1993, \$47,963.00 Assessment

For Appellant:

Allen C. Clarke, Attorney

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether respondent may reach its own audit determinations, despite receiving an audit report from the Internal Revenue Service allegedly in favor of appellant.

Whether appellant must recognize income from the partnerships in the year the partnerships report appellant's distributive share to the Internal Revenue Service, despite the fact that appellant did not receive the proceeds until the next year due to litigation between appellant and the partnerships regarding appellant's status as a partner.

Whether appellant should deduct in 1993 or in 1994 the payment of the contingency fees paid to his attorney in 1994.

Whether appellant's apparent protest of respondent's audit of 1994 serves as a claim for refund, thus allowing appellant to include 1994 in this appeal.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Marc J. Meskin, 126811

1998, \$1.00 or more Claim for Refund

For Appellant:

Marc Jay Meskin

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant maintained as his home a household which constituted the principal place of abode for his son during 1998, so that appellant qualifies for head of household filing status for 1998.

Appellant's Exhibit: Court orders, Calendars, Letters (Exhibit 3.1)

Respondent's Exhibit: Court orders, Correspondence (Exhibit 3.2)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

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Eileen P. Tobis, 92231

1998, \$1,190.00 Assessment

For Appellant:

Eileen P. Tobis

For Franchise Tax Board:

Kathleen Cooke, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant has shown that she qualified for head of household filing status for 1998.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Homer and Stephanie Noble, 118321

1994, \$151,632.00 Assessment

For Appellant:

Richard W. Craig, Attorney

Homer Noble

Stephanie Noble

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellants' domicile and residency changed from California to Colorado on or before March 1, 1994.

If appellants are liable for the California taxes in question, whether they are entitled to a credit for any taxes imposed by the State of Colorado.

Appellant's Exhibit: Law, Background, Issues, Regulations, 1994 CA Form 540NR, 1994 CO Form 104PN, (Exhibit 3.3)

Respondent's Exhibit: Chart (contacts after March 1994) (Exhibit 3.4)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Michael V. and Linda B. Harrell, 1155775

1993, \$71,928.00 Assessment

For Appellant:

Dudley Lang, Attorney

John D. Engelbrecht, CPA

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether Treasury Regulation section 301.9100-3, pertaining to extensions of time in which to file a statutory election, applies in California.

If Treasury Regulation section 301.9100-3 is applicable, whether appellants are entitled to an extension of time in which to make an election under Internal Revenue Code section 745.

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Whether an election under Internal Revenue Code section 745 to adjust the basis of partnership property pursuant to Internal Revenue Code section 745(b), if allowed, would benefit appellants.

Whether respondent properly ignored, for tax purposes, the separate existence of a corporation that was formed to protect appellants from potential liability in their acquisition of a partnership interest.

Appellant's Exhibit: Baldwin Park Project, Calculation of Income, 1993 Form 1065
(Exhibit 3.5)

Respondent's Exhibit: Texas Partnership in 1992 & 1993, Sale of Interest, Statement of Stanley Gribble (Exhibit 3.6)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

International Communication Technologies, Inc., 118468

1996, \$52,275.35 Assessment

For Appellant: Karl H. Knickmeyer, Attorney

For Franchise Tax Board: Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant has shown that it is entitled to a bad debt deduction for the year ended December 31, 1996.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 11:10 a.m. and reconvened at 11:20 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, except Ms. Mandel not participating on *Fireside Thrift Company, 113781*, and Mr. Chiang and Mr. Parrish not participating on *American Telephone-Telegraph Co., 151954*, and *American Telephone-Telegraph Co., 151955*, the Board made the following orders:

American Telephone-Telegraph Company, 151954

1-1-90 to 6-30-92, \$910,351.40

Action: Approve the credit and cancellation as recommended by staff. Mr. Chiang and Mr. Parrish not participating.

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American Telephone-Telegraph Company, 151955

7-1-92 to 12-31-94, \$534,541.21

Action: Approve the credit and cancellation as recommended by staff. Mr. Chiang and Mr. Parrish not participating.

Chester C. Rasberry, 155541

4-28-99 to 4-28-99, \$129,668.52

Action: Approve the credit and cancellation as recommended by staff.

Citicorp North America Inc., 154351

4-15-99 to 4-15-99, \$1,772,254.69

Action: Approve the credit and cancellation as recommended by staff.

Chester C. Rasberry, 155553

3-30-99 to 3-30-99, \$87,622.68

Action: Approve the credit and cancellation as recommended by staff.

Servicios Aeronauticos S Ade CV, 154954

7-2-92 to 7-2-92, \$960,143.05

Action: Approve the credit and cancellation as recommended by staff.

Display Inspection Systems, Inc., 154616

4-1-98 to 6-11-99, \$69,512.67

Action: Approve the credit and cancellation as recommended by staff.

Display Inspection Systems, Inc., 154617

10-1-97 to 3-31-98, \$142,229.61

Action: Approve the credit and cancellation as recommended by staff.

AMS Neve, Inc., 91879

7-1-96 to 3-31-99, \$677,909.61

Action: Approve the credit and cancellation as recommended by staff.

Kirell Development, Inc., 153116

7-1-96 to 6-30-99, \$445,951.91

Action: Approve the credit and cancellation as recommended by staff.

Primary Resources Inc., 152293

1-1-98 to 9-30-00, \$105,793.61

Action: Approve the refund as recommended by staff.

Thompson Design Group, Inc., 98641

10-1-97 to 12-31-00, \$365,807.22

Action: Approve the refund as recommended by staff.

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Enterprise IG Corporation, 99075

10-1-97 to 12-31-00, \$182,458.34

Action: Approve the refund as recommended by staff.

Cor Therapeutics Inc., 34125

7-1-96 to 6-30-97, \$573,003.25

Action: Approve the refund as recommended by staff.

Fireside Thrift Company, 113781

1-1-98 to 3-31-01, \$6,586,742.89

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

Alameda Newspapers Inc., 60655

1-1-97 to 3-31-99, \$379,388.16

Action: Approve the refund as recommended by staff.

Europa Auto Imports Inc., 154497

7-1-01 to 9-30-01, \$317,136.51

Action: Approve the refund as recommended by staff.

Iomega Corporation, 100648

10-1-98 to 6-30-99, \$64,133.22

Action: Approve the refund as recommended by staff.

Nobel Biocare USA, Inc., 115611

1-1-98 to 12-31-98, \$168,943.10

Action: Approve the refund as recommended by staff.

Digital Lava, Inc., 104747

1-1-98 to 9-30-00, \$141,316.39

Action: Approve the refund as recommended by staff.

Vertex Satcom Systems, Inc., 150954

10-1-97 to 6-30-00, \$57,723.73

Action: Approve the refund as recommended by staff.

Electronics Boutique of America Inc., 129524

1-1-00 to 6-30-00, \$53,606.24

Action: Approve the refund as recommended by staff.

MRA Systems, Inc., 133053

10-1-00 to 6-30-01, \$69,032.01

Action: Approve the refund as recommended by staff.

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Pacificare Inc., 153859

7-1-98 to 12-31-00, \$289,177.93

Action: Approve the refund as recommended by staff.

YBG Associates LLC, 154397

1-1-98 to 12-29-00, \$114,181.51

Action: Approve the refund as recommended by staff.

California Newspapers LP, 152937

4-1-99 to 6-30-00, \$104,423.55

Action: Approve the refund as recommended by staff.

Micron Technology, Inc., 140431

4-1-01 to 6-30-01, \$57,030.57

Action: Approve the refund as recommended by staff.

Nestle USA Inc., 153756

4-1-97 to 12-31-00, \$67,172.25

Action: Approve the refund as recommended by staff.

Thrifty Payless, Inc., 50459

9-27-98 to 9-25-99, \$536,990.16

Action: Approve the refund as recommended by staff.

DMX Music., Inc., 152247

7-1-99 to 12-31-00, \$134,610.30

Action: Approve the refund as recommended by staff.

Sun Microsystems Inc., 139546

1-1-01 to 6-30-01, \$712,596.40

Action: Approve the refund as recommended by staff.

Preferred Window Products Inc., 154399

7-1-98 to 6-30-01, \$318,420.04

Action: Approve the refund as recommended by staff.

Nobel Biocare USA Inc., 154881

1-1-98 to 12-31-00, \$558,688.24

Action: Approve the refund as recommended by staff.

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FINAL ACTION ON APPEALS HEARD MARCH 12, 2002

Mr. Andal moved to sustained the action of the Franchise Tax Board in the following appeals: *Robert and Robin Bender, 75792, Marc J. Meskin, 126811, and Eileen P. Tobis, 92231*. No vote was taken.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal voting yes, Ms. Mandel voting no, Mr. Parrish abstaining, in the appeal of *Robert and Robin Bender, 75792*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Marc J. Meskin, 126811*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Eileen P. Tobis, 92231*, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Homer and Stephanie Noble, 118321

1994, \$151,632.00 Assessment

For Appellant:

Richard W. Craigo, Attorney

Homer Noble

Stephanie Noble

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellants' domicile and residency changed from California to Colorado on or before March 1, 1994.

If appellants are liable for the California taxes in question, whether they are entitled to a credit for any taxes imposed by the State of Colorado.

Appellant's Exhibit: Law, Background, Issues, Regulations, 1994 CA Form 540NR, 1994 CO Form 104PN, (Exhibit 3.7)

Respondent's Exhibit: Chart (contacts after March 1994) (Exhibit 3.8)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

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FINAL ACTION ON APPEALS HEARD MARCH 12, 2002

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Michael V. and Linda B. Harrell, 1155775*, the Board sustained the action of the Franchise Tax Board on Issues 1-3.

Mr. Andal moved to reverse the action of the Franchise Tax Board on Issue 4, seconded by Mr. Parrish, the motion failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered to sustain the Franchise Tax Board on Issue 4.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *International Communication Technologies, Inc., 118468*, the Board sustained the action of the Franchise Tax Board.

The Board recessed at 11:30 a.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Krishnan Krishna and Abha Krishna, 83335

1994, \$42,086.00 Assessment

For Appellant:

James Kolb, Attorney

For Franchise Tax Board:

Charlene Woodward, Tax Counsel III

Action: The Board took no action.

Timothy J. Salyer, 127099

1990, \$4,563.00 Assessment

For Appellant:

Timothy J. Salyer

For Franchise Tax Board:

Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant has met his burden to prove error in the proposed assessment or the federal action it is based on.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Klehs absent, the Board reversed the action of the Franchise Tax Board.

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Jack R. and Patricia J. Finnegan, 115429

1991, \$4,910.00 Assessment

For Appellant: Jack R. Finnegan

For Franchise Tax Board: Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellants have shown that respondent's assessment, which was based on a federal action, is incorrect.

Whether appellants have shown a business purpose in the construction of a residence, so as to make construction costs deductible as expenses incurred in a trade or business.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Michael Napolitano, 77245

1993, \$2,712.00 Assessment

For Appellant: Michael N. Napolitano

For Franchise Tax Board: Mark McEvilly, Tax Counsel III

Action: The Board took no action.

Crisa Corporation, 34424

1987, \$116,378.00 Assessment

1988, \$227,597.00 Assessment

1989, \$278,825.00 Assessment

For Appellant: Steven Toscher, Attorney
Stephen R. C. Rich, Representative
Brian Cromwell, Economist

For Franchise Tax Board: William Weissman, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the proper translation rates (pursuant to Regulation 25106.5-10, *infra*) were used by respondent in calculating cost of goods sold, depreciation, and the property factor of the unitary formula—in preparing appellant's combined report.

Whether the standard UDITPA allocation and apportionment formulas do not fairly represent the extent of appellant's business activity in California so that relief should be granted under Revenue and Taxation Code section 25137.

Appellant's Exhibit: Miscellaneous Exhibits (Exhibit 3.9)

Respondent's Exhibit: Miscellaneous Exhibits (Exhibit 3.10)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Stanley D. Kaye, 118471

1998, \$2,102.00 Assessment

\$525.50 Penalty, Late Filing

\$528.25 Penalty, Notice and Demand

For Appellant: Stanley Kaye

For Franchise Tax Board: Suzanne Small, Tax Counsel

Action: The Board took no action.

Penny Z. Knelman, 127561

1998, \$1,189.00 Assessment

\$347.75 Penalty, Notice and Demand

\$297.25 Penalty, Late Filing

\$69.00 Filing Enforcement Fee

For Appellant: Penny Knelman

Barry Knelman

For Franchise Tax Board: Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant has demonstrated error in respondent's assessment.

Whether appellant has demonstrated reasonable cause to abate late filing and notice and demand penalties.

Appellant's Exhibit: Miscellaneous Statutes (Exhibit 3.11)

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Larry L. and Kathy L Vandermoon, 92235

1994, \$2,105.00 Assessment

\$421.00 Penalty, Accuracy

1995, \$1,357.00 Assessment

\$271.40 Penalty, Accuracy

For Appellant: Larry L. Vandermoon

For Franchise Tax Board: Suzanne Small, Tax Counsel

Action: The Board took no action.

Richard L. Pessler, 119149

1997, \$739.00 Assessment

For Appellant: Richard Lee Pessler

For Franchise Tax Board: Suzanne Small, Tax Counsel

Action: The Board took no action.

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Arde V. Atheian, 112506

1998, \$82.02 Claim for Refund

For Appellant: No Appearance

For Franchise Tax Board: Jozell Brunett, Supervising Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether respondent abused its discretion in refusing to refund paid interest.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Theodore M. Johnson, 88998

1993, \$5,156.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Richard Gould, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant may exclude long-term disability payments from his California taxable income pursuant to Revenue and Taxation Code section 17131, which incorporates Internal Revenue Code sections 104(a)(3) and 105(c) by reference into California law.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel abstaining, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON APPEALS HEARD MARCH 12, 2002

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, in the appeal of *Jack R. and Patricia J. Finnegan, 115429*, the Board sustained the action of the Franchise Tax Board.

Mr. Klehs moved to sustain the Franchise Tax Board, seconded by Ms. Mandel, failed to carry, Mr. Klehs and Ms. Mandel voting yes, Mr. Chiang, Mr. Andal and Mr. Parrish voting no, in the appeal of *Crisa Corporation, 34424*.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board submitted the appeal for decision granting the Appeals Section 60 days to prepare a recommendation and bring back before the Board.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Penny Z. Knelman, 127561*, the Board sustained the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

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The Board adjourned at 3:00 p.m.

The foregoing minutes are adopted by the Board on May 30, 2002.